

September 5, 2019

DISSEMINATION BY THE LIVINGSTON GROUP, LLC

FARA Registration #6344

**THE OWNER OF THE LIVINGSTON GROUP'S CLIENT --- ZAKLAD
METALURGICNY, THROUGH SEKCO OPERATING COMPANY ---
INITIATED ON HIS OWN A LETTER TO THE AMBASSADOR OF THE
UNITED STATES TO POLAND.**



Zakład Metalurgiczny

"WSK Rzeszów" Sp. z o.o.

ul. Hetmańska 120, 35 – 078 Rzeszów, POLAND

Tel. +48 17 717 2700, Fax: +48 17 717 2802, <http://www.zmwskrz.com>

The Honorable Mrs. Georgette Mosbacher
Ambassador of the United States of America
The Embassy of the United States of America
al. Ujazdowskie 29/31
00-540 Warszawa, Poland

June 12, 2019

Theft of shares in Zakład Metalurgiczny

Dear Honorable Ambassador,

In 2007 I purchased a foundry in Rzeszow (ZM) from Pratt & Whitney (UTC). The pe firm that had agreed to fund half of the deal decided not to invest, because I would not agree to take cash out of ZM (by illegal means) and pay it back to them. The company employed 800 people and needed a lot of new machinery and environmental clean-up. Paying the pe firm back its investment up front would have killed the company, to say the least.

I was able to personally borrow enough money to replace the funds that the pe firm refused to pay at the closing with P&W. During the next five years management and I rebuilt the foundry, cleared up the environmental violations, and saved all the jobs. Today we employ 960 people and sell castings and forgings to Europe and the USA, including Pratt & Whitney, Safran, GE, AGCO, ABB Siemens and other demanding customers.

Unbelievably, the pe firm claimed half of the company, despite having never paid a penny. We have fought them for 12 years in the courts in Poland. They are getting close to stealing half of the shares in ZM for nothing. If you have trouble believing this bizarre story, I do not blame you. I can gladly provide the court records and contracts to the appropriate members of your staff if you agree.

Your record in standing up for TVN gives me hope that you might be willing to get involved.

That was an excellent speech you gave at the AMCHAM Breakfast last week. I was sorry not to be able to speak with you after.

Sincerely yours,

Hugh Aiken
Chairman

Attached: background of ZM project

ZM BACKGROUND

Hugh Aiken (Aiken) is a New Orleans-born, US citizen living in Paris, France. He previously served as Chairman and CEO of Atchison Casting Corporation; a Kansas foundry company listed on the New York Stock Exchange. He currently owns ZAKLAD METALURGICZNY (ZM), a foundry company in Poland.

ZM employs 960 people. It was originally part of a company acquired from the Polish Government by Pratt & Whitney (P&W). Because it was not capable of making castings for Pratt & Whitney engines, used obsolete equipment and was unprofitable, P&W spun it off as ZM in 2004 and offered it for sale.

Aiken, who had experience in the foundry business, in 2005 made an offer to P&W to buy ZM. He sought a financial partner and was introduced to Harpal Randhawa, owner of GEM Management Limited (GEM), a British Virgin Islands investment company. GEM agreed to help finance the purchase of ZM. Two days before the planned purchase in March 2007 GEM refused to provide its half of the investment, due to Aiken's refusal to tunnel money out of ZM to GEM. At closing with WSK in 2007, Aiken had to provide all the cash required for the purchase of ZM - \$1,803,000..

The company, managed by Aiken, subsequently became profitable in 2012. In a long series of Polish court cases, GEM has tried to claim half the company, even though it did not put up its half of the original investment. Aiken won the initial court case in 2008 and the appeal in 2009, but after GEM hired a lawyer with close ties to a Polish Supreme Court Justice, Aiken lost an appeal in the Polish Supreme Court in 2010 and then in the appeal court in 2011. The union representing the workers at ZM - Solidarnosc – strongly supports Aiken.

In 2019, Aiken continues to fight GEM in the courts. GEM is getting close to achieving its goal of obtaining 50 percent of ZM (and of ZAMCO, the holding company) for nothing. In such case Aiken and ZM management would lose half of ZM which they bought and built.

REQUEST FOR ASSISTANCE

The current Polish Government has established, through the Ministry of Justice, a process for reviewing court decisions deemed incorrect or corrupt. Only a couple of decisions have actually been reviewed to-date, with mixed results. Both Aiken and Solidarnosc have filed a request for the review of the appeal court 2011 judgement. The objective is to have the ZM case reviewed and ultimately overturned by the Polish General Prosecutor.

TIMELINE

- In 2002, Pratt & Whitney (P&W) buys WSK Rzeszow (WSK), a company that manufactures aircraft engines, from the Polish government. In 2004, P&W creates ZAKLAD METALURGICZNY (ZM) and spins off obsolete WSK iron and aluminum foundries, forge and machine shop, preparatory to their sale or closure.
- In June 2005, Hugh Aiken (Aiken), an American foundry industrialist, receives the sales prospectus, visits ZM and performs due diligence. In September, he submits a preliminary offer to buy ZM. Simultaneously Aiken searches for a financial partner to participate in funding the project.

- In November 2005, Aiken signs the Foundry Investment Agreement (FIA) with private equity firm GEM Management Limited (GEM), which is incorporated in the British Virgin Islands and owned by Harpal Randhawa. GEM agrees to invest between \$1 and \$4 million to buy ZM with Aiken. Aiken agrees to negotiate the acquisition, provide \$1 million toward the purchase, and manage ZM.
- From November 2005 to March 2007, Aiken works at ZM without pay while negotiating with P&W regarding the terms of sale and the price for ZM.
- In 2006, Aiken incorporates ZAMCO Sp. z o. o. (ZAMCO) as a Polish holding company to buy ZM, and transfers half of the shares of ZAMCO to GEM in return for GEM signing the FIA and committing to invest between 1 and 4 million US\$. GEM loans ZAMCO \$100,000 of the \$200,000 deposit required by P&W.
- On March 16, 2007, ZAMCO buys ZM from P&W's Polish division WSK for \$1,500,000 (with expenses, a total cost of approximately \$1,803,000). GEM does not attend the closing, and does not provide the financing to ZAMCO as agreed to in the FIA. GEM withholds financing because Aiken and ZM management refuse to launder and pay GEM \$1,000,000 in cash from the working capital of ZM.
- Hugh Aiken signs the Purchase Contract with WSK in two different capacities; first as Manager of ZAMCO, and second as himself personally, as required by P&W. He is personally, legally obligated to pay WSK at the closing. Aiken borrows the missing funds at the last moment and wires the remaining \$900,000 (that GEM fails to provide) to ZAMCO on the morning of the closing, thereby allowing ZAMCO to pay WSK/P&W and complete the act of sale.
- Aiken never-the-less requests GEM to provide the missing funds. GEM agrees to assume and pay half of the ZAMCO capital increase within 2 weeks, but does not pay anything within the new deadline, or ever. Aiken repays GEM the \$100,000 which it lent to ZAMCO prior to the closing.
- In July 2007, GEM sues ZAMCO, claiming that the shares to which Aiken subscribed in order to fund the acquisition are invalid. The cancellation of these shares would effectively mean that GEM owns half of ZAMCO and half of ZM, without having paid for the shares in ZAMCO or ZM, and after having breached its contract to fund half of the purchase of ZM at the closing of the act of sale.
- During the period 2008 to 2011, Aiken invests an additional \$1 million in ZM, and ZM borrows \$6 million from banks, to accomplish \$7 million of capital investments in ZM for new equipment, environmental clean-up and technical training, and bring ZM operating results to break even.
- In October 2008, the court of first instance in Rzeszow, Poland rules against GEM, saying that GEM had decided not to invest in ZAMCO and ZM. The result is that Aiken and ZM managers (who bought 16% of ZAMCO/ZM from Aiken) own 99+% of ZAMCO and ZM, after having paid 100% of the price. The appeal court in Rzeszow confirms this decision five months later in March 2009.
- In 2009, GEM's law firm, SK&S in Warsaw, appeals to the Polish Supreme Court, with which it has strong ties.

- In 2010, the Supreme Court annuls the lower courts' judgements, saying that Aiken acted in bad faith by subscribing to the whole capital increase in ZAMCO to fund the purchase of ZM. This could have the eventual effect of canceling 99% of Aiken's shares (16% of which are now owned by ZM management) and giving half of ZM to GEM for nothing. The Court is not bothered by the fact that GEM caused Aiken to put up all the money by breaching the Foundry Investment Agreement, and then sued Aiken for bad behavior and claimed half of ZM for nothing. The parties to the agreement with WSK were ZAMCO, GEM and Hugh Aiken. If Aiken had not put up the money for the closing, and WSK had sued for breach of contract, Hugh Aiken would have been the most exposed as he was the only natural person with declared assets. In addition to the share purchase agreement there were undertakings of the buyers (Aiken, GEM and ZAMCO) concerning investment in environmental and employee friendly technology and a social agreement with trade unions, signed by Aiken. Hugh Aiken in addition to financial and legal claims would lose his reputation, if he would not put up all the money. It is impossible to pursue GEM in the British Virgin Islands for performance of the FIA, let alone to do so in the two days before closing.
- In 2011 the lower courts re-run the case and rule in favor of GEM, based upon the Supreme Court's incorrect opinion that Hugh Aiken acted in bad faith.
- In 2018, ZAMCO files a request with the Ministry of Justice to review the February 2010 Supreme Court judgement. In 2019, following the General Prosecutor's suggestion, ZAMCO amends this request to review the 2011 appeal court judgement instead of the supreme court annulment.
- In May 2019, KM NSZZ Solidarnosc (Solidarnosc), a highly respected Polish trade union, submits a letter to the General Prosecutor, Zbigniew Ziobro, in support of a positive consideration of ZAMCO's complaint against the 2011 appeal court decision.
- In response to a request by the Department of Justice, Solidarnosc also submits a 9-page explanation of why the rulings of 2010 and 2011 against ZAMCO are illegal and unconstitutional.
- ZAMCO, Aiken and ZM management continue to fight GEM in the courts. GEM is getting close to achieving its goal of obtaining 50% of ZAMCO and ZM. In such case Aiken and ZM management, who paid over \$2 million and spent 12 years re-building ZM, would lose half of their company to GEM, who paid nothing and breached its investment agreement, the FIA, as well as its loan agreement, stock subscription agreement and the purchase agreement with P&W/WSK.
- In May 2019, ZAMCO files an appeal against the recent ruling in one of the most important cases in the series of judicial proceedings. This ruling, if upheld, could effectively grant GEM ownership and control of half of ZM. Since 2010, the lower courts have followed the 2010 Supreme Court opinion that Aiken acted in bad faith in 2007 when he paid P&W the full price for ZM due to GEM's refusal to invest.